

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
6 ROCKY MOUNTAIN ETHANOL

7 FINDINGS OF FACT, CONCLUSIONS OF LAW,
8 ORDER, AND MEMORANDUM OPINION

9 These informal contested case proceedings were filed before the Commissioner
10 of Political Practices (Commissioner) to consider the appeal of the principal
11 referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-306,
12 the principal appealed the Commissioner's assessment of a civil penalty resulting
13 from its late filing of a lobbying disclosure report. The principal filed a written
14 Waiver of Hearing waiving its right to an in-person hearing, and submitted a written
15 statement for the Commissioner's consideration.

16 Based on the written submissions of the principal, the documents of record in the
17 Commissioner's file, and the applicable law, the Commissioner makes the following
18 findings of fact, conclusions of law, and order.

19 **FINDINGS OF FACT**

- 20 1. Rocky Mountain Ethanol is a principal registered with the Commissioner.
- 21 2. The 2003 Montana Legislature passed House Bill 38 and the governor signed
22 it into law. The law took effect on February 18, 2003. House Bill 38, now codified
23 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed
24 against any person who fails to file lobbying disclosure reports within the time
25 required by law.

1 3. The post-Session 2007 lobbying disclosure report for Rocky Mountain Ethanol
2 was required to be filed no later than May 29, 2007.

3 4. On May 16, 2007 the office of the Commissioner sent an email to all
4 principals, including Rocky Mountain Ethanol. The email advised principals that a
5 post-Session 2007 lobbying financial disclosure report was required to be filed by
6 May 29, 2007. The email referenced the appropriate form that was required to be
7 filed, known as a form L-5A, and noted that it was available for download on the
8 Commissioner's website. Citing the provisions of § 5-7-208(4), MCA, the email
9 stated: "A report must be filed in this office even though neither lobbying nor
10 incurring of lobbying expenses may have occurred."

11 5. Rocky Mountain Ethanol failed to file its L-5A on or before May 29, 2007.

12 6. On May 30, 2007, the Commissioner sent a letter to Patricia Joyce stating that
13 the post-Session L-5A report was due May 29, 2007, but had not been received. The
14 letter stated that a civil penalty started being assessed on May 30, 2007, at \$50 per
15 day, and would continue until the report was filed or until the penalty amount
16 reached \$2,500. The letter urged the principal to fax the delinquent report
17 immediately, followed by a hard copy.

18 7. On May 31, 2007, the principal filed its report. Because the report was filed
19 two business days late, a \$100 civil penalty was assessed.

20 8. Rocky Mountain Ethanol requested a hearing to contest the civil penalty. The
21 Commissioner issued a Notice of Agency Action and Opportunity for Hearing on
22 August 9, 2007. Rocky Mountain Ethanol filed a written Waiver of Hearing and
23 submitted a written statement for the Commissioner's consideration.

24 9. In a written statement, Administrative Assistant Wilma Williams asked on
25 behalf of Rocky Mountain Ethanol that the penalty be waived because Principal
26 Authority Pat Joyce was no longer an employee. She asked further that the Rocky
27 Mountain Ethanol lobbyist registration be terminated effective May 29, 2007.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

Civil penalties for delays in filing -- option for hearing --

suspension of penalty. (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2), MCA, requires a lobbying disclosure report to be filed with the Commissioner “no later than 30 days following adjournment of a Legislative Session,” and the report must include “all payments made during the session, except as previously reported.” § 5-7-208(4), MCA.

MEMORANDUM OPINION

The filing deadlines for lobbying disclosure reports are established by statute. When reports haven’t been filed, reminders are sent – both before and after the filing deadlines. Personnel changes generally have no bearing on the requirement for timely filing of a lobbying report, and are not a sufficient basis for reducing or waiving a civil penalty.

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3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that Rocky Mountain Ethanol shall
5 pay a civil penalty of \$100 to this office no later than October 12, 2007.

6 DATED this 11th day of September, 2007.

7 

8 Dennis Unsworth
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT,
15 CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Wilma Williams
17 Rocky Mountain Ethanol
18 PO Box 1539
19 Thompson Falls MT 59873

20 DATED: September 11th, 2007

21 
22 Mary Baker
23 Program Supervisor